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August 12, 2015

Regulations Division

Office of General Counsel

Department of Housing and Urban Development

451 7th Street SW

Room 10276

Washington, DC 20410-0500

Via regulations.gov

Re: Docket No. FR-5173-N-05

Affirmatively Furthering Fair Housing Assessment Tool:

Solicitation of Comment—30-Day Notice Under Paperwork Reduction Act of 1995

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on what is in the best interests of people who receive and those who are in need of federal housing assistance, especially extremely low income people and people who are homeless.

NLIHC enthusiastically endorsed the final affirmatively furthering fair housing (AFFH) rule, and pledges to help realize successful implementation in the coming years.

NLIHC endorsed the proposed initial Assessment Tool; however, we must offer only qualified endorsement of the revised Assessment Tool. We are disappointed that many of the suggestions offered regarding the initial Assessment Tool were not incorporated in the revised Assessment Tool. We urge HUD to reconsider some of the most important suggestions offered in our November 25, 2014 comment letter.

Founded in 1974 by
Cushing N. Dolbeare

Dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes

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In particular, we are concerned about the revised Assessment Tool's lack of attention to an important aspect of affirmatively furthering fair housing choice – the choice of long-time low income residents, and especially residents who are members of protected classes, to remain in their publicly supported affordable homes and in the communities where they have social, cultural, and language ties, even if those communities are racially or ethnically segregated.

In short, there are four general areas in which the final Assessment Tool should be improved:

- The Community Participation Process section needs to be augmented in a manner that provides more guidance to program participants and that affords community stakeholders a means to assess the thoroughness of a program participant's efforts to provide for and encourage public participation.
- The final Assessment Tool must provide guidance reflecting the final AFFH rule's clear articulation that the obligation to affirmatively further fair housing means preserving affordable housing and/or revitalizing areas of racial or ethnic concentrations of poverty, as well as enhancing access to opportunity.
- The mobility section that was in the initial Assessment Tool should be restored, modified to incorporate the suggestions NLIHC made in our November 2014 comment letter.
- The requirement that program participants assign one of three levels of significance to the listed contributing factors impacting the four fair housing issues that was in the initial Assessment Tool should be restored.

The Assessment Tool should have as much detail as possible because it will be the working template and ultimate document that program participants, advocates, and residents will be working with on a frequent, operational basis. The final rule, along with any additional guidance HUD proposes to provide, is important to realize the goal of affirmatively furthering fair housing choice, but on a day-to-day working basis, these documents will eventually be less prominent than the Assessment Tool itself. An Assessment Tool with detailed guidance providing direction echoing the final rule will minimize the need for stakeholders to toggle between the final rule, any subsequent guidance, and the Assessment Tool. In short, the Assessment Tool is as important as the final rule.

The Community Participation Process

The regulations require program participants to consult with a wide variety of organizations, including those that represent people who members of the Fair Housing Act's protected classes.

Comments

The final Assessment Tool should require a list of organizations consulted so that advocates are able to assess whether the most appropriate entities were consulted.

Because the Assessment Tool is intended to be a guide for program participants, and should also be viewed as a guide for community participants, the final Assessment Tool should include examples of the types of groups a program participant could consider reaching out to. Examples NLIHC suggested in November included public housing Resident Advisory Boards and resident councils, groups representing Housing Choice Voucher households, groups representing tenants of HUD-assisted multifamily housing,

tenant organizations, neighborhood-based organizations in R/ECAPs, community-based development organizations in R/ECAPs, affordable housing advocacy organizations, and legal services offices.

The regulations require program participants to not only provide for but to also encourage community participation.

Comments

Therefore, program participants should describe how community participation was both provided for and encouraged. They should be required to present a detailed list (by date and time of day) of specific participation activities for various components of the community.

The final Assessment Tool should require program participants to list individuals and organizations that submitted written comments and/or delivered remarks at public hearings so that advocates will be able to assess if the groups that participated represent a balance of opinions.

The regulations require program participants to encourage participation by residents of public and assisted housing developments, minorities, non-English speaking persons, and people with disabilities.

Comment

The revised Assessment Tool requires program participants to describe outreach to people living in R/ECAPs, those with limited English proficiency, and those with disabilities. The final Assessment Tool should also require program participants to report discussions with residents of public and assisted housing and residents of R/ECAPs in places where community-based revitalization efforts exist or are planned to determine if residents want to remain in their homes and communities or to relocate to areas that may offer other opportunities

The Final Assessment Tool Must Provide for a More Balanced Analysis and Assessment

The analysis sections of the initial and revised Assessment Tools only raise questions about racial and ethnic concentrations of poverty and disparities in access to community assets. This focus could be misconstrued to suggest, contrary to the final AFFH rule, a prohibition on the use of resources in neighborhoods that have such concentrations or lack certain assets, even though those neighborhoods have assets not mentioned in the Assessment Tool.

Comment

Positive assets that should be listed in the final Assessment Tool should include community-based development organizations and affordable housing preservation organizations that have long worked with residents to improve publicly supported housing and/or community living conditions. Fair housing choice must include residents' ability to choose to remain in their homes and the communities where they have long lived and where they have deep social, community, cultural, and language ties, even if those communities are racially or ethnically areas of concentrated poverty. The final Assessment Tool should provide guidance that takes these assets into consideration.

Augmented Guidance Regarding Local Knowledge Needed in Tool to Achieve Balance

In addition to requiring program participants to use the HUD-provided data and maps, the AFFH rule requires them to use local data and knowledge. The rule also requires program participants to consider information provided during the required community participation and organization consultation processes.

Comments

To a significant extent, the balance that should be reflected in the final Assessment Tool can be achieved by guiding program participants in a robust gathering and presentation of local knowledge.

Program participants should be required to describe efforts to identify supplemental data and local knowledge from sources such as universities, advocacy organizations, service providers, planning bodies, transportation departments, school districts, healthcare departments, employment services, unions, and business organizations.

The final Assessment Tool should provide examples of local knowledge such as:

- Efforts to preserve publicly-supported housing
- Community-based revitalization efforts
- Public housing Section 18 demolition or disposition application proposals
- Rental Assistance Demonstration (RAD) conversion applications
- Transit-Oriented Development plans
- Major redevelopment plans
- Comprehensive planning or zoning updates
- Source of income ordinance campaigns
- Inclusive housing provision campaigns

Program participants should summarize local knowledge gained through the consultation and community participation processes, and report what local knowledge it chose to use or not use and why.

The revised Assessment Tool requires an analysis of each of the four fair housing issues using the HUD-provided maps and data tables, supplemented by an “Additional Information” subsection to compensate for the limitations of the HUD-provided data.

Comments

In order to inject a more balanced consideration of fair housing issues, HUD should include directions in each of the “Additional Information” subsections to foster a more balanced assessment pertinent to the fair housing issue under consideration.

For example, in the “Segregation/Integration” and “R/ECAPs” sections, the Additional Information subsection should include local knowledge indicating that residents value the community in which they have long lived and where they have deep social, community, cultural, or language ties – even if those communities are segregated or are racially or ethnically areas of concentrated poverty.

The “Disparities in Access to Opportunity” section only tallies the negative side of the community asset ledger. For balance, the Additional Information subsection should seek to tally positive community assets through the required consultation and public participation processes. The final Assessment Tool should require program participants to request, gather, and present local knowledge about assets such as responsive community-based organizations, community development corporations that have worked for years to help revitalize the neighborhood, efforts by nonprofits and local government to preserve publicly supported affordable housing, active tenant organizations, and other important social network and cultural support infrastructures, such as faith-based institutions, child care centers, recreational facilities and programs, and health care providers.

For the “Disproportionate Housing Needs” section, the Additional Information subsection should require program participants to seek local knowledge through the consultation and public participation processes that describes activities or plans to preserve or develop housing for families with children, including large families. In addition, program participants should be directed to obtain and present local knowledge about neighborhoods where the disproportionate housing needs are being addressed by nonprofit and local government preservation efforts and/or neighborhood revitalization efforts by community-based development organizations and/or local governments.

The revised Assessment Tool has a component that analyzes “Publicly Supported Housing.”

Comments

In the subsection analyzing project locations, the Assessment Tool should foster a more balanced analysis. The final Assessment Tool should require program participants to ascertain and accommodate the wishes of residents of publicly supported housing projects in segregated or R/ECAP areas. Therefore, the “Additional Information” subsection should direct program participants to assess whether residents prefer their developments to be improved and preserved, or prefer assistance in moving to areas that may offer other opportunities.

Also, the “Additional Information” subsection should require program participants to describe efforts that have been made, are underway, or are planned to preserve Project-Based Section 8 developments at risk of opting out of the program or prepaying their mortgage and thereby exiting the program, or of other HUD Multifamily-assisted developments from leaving the affordable housing stock due to FHA mortgage maturity. Program participants should also describe efforts that have been made, are underway, or are planned to preserve LIHTC developments, including at Year 15 and beyond Year 30.

The “Segregation/Integration” and “R/ECAPs” sections ask program participants to discuss changing patterns of segregation/integration or changes of R/ECAPs to areas that no longer fit that description.

Comment

The final Assessment Tool should be more specific, requiring program participants to identify areas where residents are suffering from or at risk of displacement due to gentrification.

Stronger Link Needed Between AFH and Consolidated Plan

The final part of the revised Assessment Tool requires a program participant to set priorities regarding each contributing factor the program participant identified for each of the fair housing issues, and then to set one or more goals for each fair housing issue with “significant” contributing factors. Each goal must have metrics for measuring success over an identified timeframe.

Unfortunately, the final AFFH rule does not require a program participant to include strategies and actions to implement the goals and priorities that the Assessment Tool has established for the Assessment of Fair Housing (AFH). The final rule merely calls for strategies and actions to implement the fair housing goals and priorities to be included in a Five-Year Consolidated Plan or Five-Year Public Housing Agency Plan. The instructions for the revised Assessment Tool mirror this limitation.

Comments

The final Assessment Tool should require program participants to go one step further and propose actions that could be taken toward achieving each fair housing goal.

The entire AFH process leading up to the goals and priorities stage will have involved the program participant, those it consulted, and the community that participated in the development of the AFH. It is this set of participants who are most likely to have ideas about actions that should be taken to achieve the identified fair housing goals. A set of proposed actions embedded in the AFH will facilitate the strategic thinking of those who later will embark on the Consolidated Plan process or Public Housing Agency Plan process.

Most participants in the Consolidated Plan process have historically limited their thinking to utilizing the formula grant programs (CDBG, HOME, etc). Without recommended actions in the AFH, the Consolidated Plan participants would have to take an unfamiliar leap from the AFH goals and priorities to devise appropriate strategies and actions to incorporate into the Consolidated Plan. A set of recommended actions in the AFH would more firmly and realistically link the AFH to the Consolidated Plan.

Restore Section Pertaining to Mobility

The initial Assessment Tool had an entire section regarding mobility policies, especially related to Housing Choice Vouchers. The revised Assessment Tool eliminated this section.

Comment

Major barriers to housing choice revolve around voucher issues, including landlord discrimination, public housing agency portability practices, payment standard policies, and admissions policies. NLIHC strongly urges HUD to restore the mobility section that was in the initial Assessment Tool, modified to incorporate suggestions NLIHC made in our November 2014 comment letter.

Restore Three Categories of Significance to Contributing Factors Discussion

The initial Assessment Tool required program participants to indicate whether a contributing factor was “highly significant,” “moderately significant,” or “not significant.” The revised Assessment Tool merely asks program participants to identify any contributing factors that “significantly” impact any of the fair housing issues.

Comment

NLIHC urges HUD to restore the three levels of significance in the final Assessment Tool. By requiring a program participant to explicitly state that a listed contributing factor is “not significant,” the public will have a basis for raising objections to HUD reviewers. In addition, it is important to include contributing factors that might be considered “moderately significant” because they too warrant action and might more easily be addressed in the short-run while a program participant works on addressing the more difficult “highly significant” contributing factors that might require more time.

Technical Comments Regarding the Assessment Tool

Preference for Option B

We strongly prefer Option B because it presents a list of contributing factors after the analysis of each fair housing issue. Because the nature of contributing factors can vary depending on the type of fair housing issue, a list of contributing factors tailored to a given fair housing issue will elicit more complete and appropriate responses from program participants.

Corrections Needed in Lists of Contributing Factors

There are inconsistencies between the lists of contributing factors in Option A and Option B. For instance, Option A, “Publicly Supported Housing Patterns,” does not include four contributing factors listed in Option B: “Land use and zoning laws,” “Occupancy codes,” “Source of income discrimination,” and “Lack of regional cooperation.” Option A, “Fair Housing Analysis,” is missing “Location and type of affordability.” Option A, “Disability and Access,” is missing “Land use and zoning laws” and “Occupancy codes and restrictions.”

Inconsistent Numbering and Lettering

The Outlines for the Assessment Tools and the Instructions are not consistent, and therefore make it difficult to refer back and forth between the two documents. First, the Assessment Tools use unconventional outline formats. For instance, at “Part V. Analysis, B. Fair Housing Issue Analysis, 1. Segregation/Integration,” the next subheading is “1. Analysis,” rather than a standard “a. Analysis.” This unconventional approach becomes confusing as “2. Additional Information,” which follows is in turn followed by “2. R/ECAPs.”

The Instructions do not follow the outline format of the Assessment Tools. For example the Instructions for “Part V Analysis, B. Fair Housing Issue Analysis” is followed by “Segregation/Integration” without a number that would line it up with the Assessment Tool. And, rather than be consistent with the Assessment Tools, there is no subheading “1. Analysis” or “2. Additional Information.” In order to facilitate tracking between the Instructions and the Assessment Tools, it would be very helpful to synchronize numbering, lettering, and heading/subheading formats.

Add “Timeframe” to the Goals Table

The Instructions require program participants to identify metrics, milestones, and timeframe for each goal. However, there is not a column or cell for “Timeframe” on the table. Without that prompt, a program participant might forget to include a timeframe and the public will not expect a timeframe for achieving a fair housing goal.

NLIHC strongly supports the new AFFH rule and pledges to help contribute toward its successful implementation. A key component to the future success of the AFFH rule is an Assessment Tool that provides clear, complete, and balanced guidance for the development of an Assessment of Fair Housing.

Sincerely,

A handwritten signature in cursive script that reads "Sheila Crowley". The signature is written in black ink and is positioned above the typed name and title.

Sheila Crowley
President and CEO